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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,850	07/24/2003	Max Gottl	265-147	8936
23117	7590	09/22/2004		EXAMINER
NIXON & VANDERHYE, PC				ALEMU, EPHREM
1100 N GLEBE ROAD				
8TH FLOOR			ART UNIT	PAPER NUMBER
ARLINGTON, VA 22201-4714			2821	

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

JW

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/625,850	GOTTL ET AL.
	Examiner Ephrem Alemu	Art Unit 2821

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 May 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-7 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5-14-04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 5-14-04, partially, fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein in part has not been considered.

### ***Specification***

2. The disclosure is objected to because of the following informalities:  
A) A heading for each section has not been included. The Office suggests Applicant to insert a heading in each section of the specification; the section headings are as follows:

Background of the Invention.  
Brief Summary of the Invention.  
Brief Description of the Drawing(s).  
Detailed Description of the Invention  
Abstract of the Disclosure.

**each of the headings should appear in upper case, without underlining or bold type, as section headings.** See MPEP § 601.

B) The recitation “according to the preamble of claim 1 as claimed in main patent no. 102 56 960.6” should be deleted or corrected appropriately by substituting the written description of the preamble of claim 1 in the above patent.

### ***Claim Objections***

3. Claim 1 is objected to because of the following informalities: In claim 1, line 10, after “supplied,” insert --and--; and

in line 11, after “one radiator group” insert --in at least one of said gap-- to clearly distinguish the radiator or radiator groups in at least one of said gap from the radiator or radiator groups of the adjacent gap. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2-4, 6 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claims 2, 3, 4 and 6, the recitation “the respectively jointly supplied radiators or radiator groups” is not clear. Is “the respectively jointly supplied radiators or radiator groups” refers to the “radiator or radiator groups jointly supplied within the at least one of said gap” or the “radiator or radiator groups in at least one of said gap jointly supplied with one radiator or radiator groups of the adjacent gap”?

Re claim 7, the sentence starting in line 2 “in at least two gaps...” is unclear because it is not clear whether the “at least two gaps” claimed in claim 7 is the same or different than the “at least two gaps” recited in claim 1?

***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-7 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/408,780. Although the conflicting claims are not identical, they are not patentably distinct from each other because Applicants' claimed invention of claims 1-7, and the copending Application No. 10/408,780, essentially claim two-dimensional antenna defining at least two vertically running gaps. The only obvious difference between the two application is that the copending Application No. 10/408,780 refers to the at least two vertically running gaps as "at least two columns running vertically" which would have been obvious to the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Puente Baliarda et al. (US Pub. No. 2004/0145526); Plet et al. (US 6,646,611); Apostolos (US 6,359,599); Miller (US 4,131,896); Shoemaker (US 4,937,585); also teach similar inventive subject matter.

*Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ephrem Alemu whose telephone number is (571) 272-1818. The examiner can normally be reached on M-F Flex hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don K Wong can be reached on (571) 272-1834. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EA  
9-18-04

  
Don Wong  
Supervisory Patent Examiner  
Technology Center 2800